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THE WHITE HOUSE

Fact Sheet: The new Executive Order on
the Security Classification System

The new Executive Order was drafted by an interagency study team led by the National Security Council and Domestic Policy staffs. The study included consultation with interested Congressional committees and public interest groups. The new Order replaces Executive Order 11652, which was issued in 1972.

The major changes from Executive Order 11652 are as follows:

- (1) Under the old system, a document could be classified if its unauthorized disclosure could reasonably be expected to damage national security. Under the new Order, two tests must be met:

- the information must fall within one of seven classification criteria; and
- the damage must be identifiable.

The word "identifiable" has been added to tighten the standard -- to prevent classification when the damage would be insignificant. That change and the addition of the criteria are intended to make classifiers' decisions more thoughtful and less automatic.

Six of the criteria outline the subject areas for classification, such as intelligence sources and the design of weapons. The seventh allows agency heads to designate additional, narrow national security areas that may have been omitted by the first six. This authority will be used rarely, and each use must be reported to the oversight office created by the Order.

- (2) The new Order requires that most documents be classified section-by-section, not as a whole.

The Order retains the three-level classification system. (Top Secret for documents the disclosure of which would cause exceptionally grave damage to the national security; Secret for serious damage; and Confidential for identifiable damage.) Under the old system, most documents were marked with the highest classification level of any portion. As a result, much information was unnecessarily classified, since a document of dozens of pages might have only a few paragraphs that require classification, but the entire document would be classified. This problem was compounded by the fact that most classification is "derivative" -- i.e. based on references to other classified documents. Under the old system, a new document that referred to any portion of a classified document would have to be given the same classification because there was no way to tell whether the portion was classified.

The new procedure will allow ready identification of the classification level -- if any -- of each section of a document. This will avert unnecessary and overly high classification of many documents.

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This requirement will be waived for a few categories of documents where it is unworkable (e.g., computer-generated items.)

- (3) Classification of privately owned documents is forbidden unless the government acquires a proprietary interest in them or its creator used classified information, except as otherwise provided by statute.
- (4) Eleven agencies are stripped of classification authority:
 - (1) Department of Health, Education, and Welfare
 - (2) Department of Agriculture
 - (3) Department of Labor
 - (4) Federal Energy Regulatory Commission
 - (5) Interstate Commerce Commission
 - (6) Federal Communications Commission
 - (7) Civil Service Commission
 - (8) Civil Aeronautics Board
 - (9) National Science Foundation
 - (10) Federal Maritime Commission
 - (11) Domestic Policy Staff (formerly Domestic Council)

Five other agencies get reduced authority:

- (1) Department of Commerce (Top Secret to Secret)
- (2) Agency for International Development (Top Secret to Secret)
- (3) Overseas Private Investment Corporation (Secret to Confidential)
- (4) Export-Import Bank (Secret to Confidential)
- (5) Council of Economic Advisers (Top Secret to Secret)

No agency is given increased classification authority. (These changes apply to original classification authority -- not derivative classification.)

- (5) The new Order restricts the number of officials to whom classification authority may be delegated and forbids redelegation. These changes are unlikely to reduce the number with Top Secret authority (only 1,400 out of over six million Federal civilian and military employees), but there should be some reduction in the number with Secret and Confidential authority (a total of 11,900).
- (6) The new Order restricts the use of classification after a document has been requested under the Freedom of Information Act (FOIA) or the non-statutory "Mandatory Review" procedure. In theory, all documents should be classified when they are written but errors are sometimes made, and agencies need to be able to classify documents late. At present, there are no restrictions on classification after an FOIA request. Under the new Order, only senior agency officials can classify existing documents in such circumstances. For documents originated after the Order goes into effect, the authority is further limited to the agency head and the deputy.

Duration of Classification

- (7) The duration of classification is cut sharply.

Under the old system, an estimated 47% of the documents classified each year were covered by the General Declassification Schedule (GDS). These documents were

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automatically declassified after six to ten years, depending on whether they were Confidential, Secret, or Top Secret. The other 53% were exempted from GDS by officials with Top Secret classification authority. (In theory, such exemptions were limited to four categories, but the categories were drawn so broadly they were ineffective, and they were often disregarded altogether.) Most documents exempted from GDS stayed classified until they were 30 years old. At that point, they would be reviewed and declassified, except for a few items for which agency heads would extend classification indefinitely.

The new system abolishes GDS and makes the duration of classification depend on the content of the information, not its classification level. Most documents will be automatically declassified after six years or less. Agency heads and officials with Top Secret authority may set longer terms, but the Order requires them to state why the document will continue to meet the test for classification despite the passage of time. Documents given longer terms will now be reviewed and declassified when they are 20 years old instead of 30. As in the old system, agency heads will extend classification for a few items, but the new Order requires additional review every ten years. (The new Order also permits extended classification for cryptographic materials; that is the practice at present.)

The new Order makes declassification of old documents faster and less expensive. It requires agencies to cooperate with the National Archives in drafting guidelines which will let the Archives review and declassify most documents on its own, without having to forward them to the agency to review.

The National Archives estimates that the change from 30 to 20 years will result in declassification of an extra 250 million pages over the next decade. (Without the change, about 350 million pages would have been released in that period.) The shift from GDS to six years will mean faster declassification for millions more documents when the first items classified under this Order become six years old.

Declassification Process

- (8) The new Order makes it clear that a request for release of a document cannot be rejected merely because the document is classified. The agency must examine the document to see whether its release would still do identifiable damage to the national security in spite of the passage of time. If it would not, the document will be declassified.
- (9) For the first time, the declassification process will include a "balancing test." In appropriate cases the public's interest in knowing the information is to be balanced against the need to keep it secret. When the interest in disclosure is greater, the information will be released even though its continued classification is justified.
- (10) Agencies are required to declassify information as early as national security permits and to give declassification as high a priority as classification. In addition, the number of officials authorized to declassify will be increased.

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Other Changes

- (11) An Information Security Oversight Office is created to police the classification system. (At present, there is an interagency committee which has limited authority.) The new Office will be located in the General Services Administration under the supervision of the National Security Council.
- (12) At present, there are hundreds of "special access" programs (also called "compartments") which restrict access to highly sensitive classified information. These programs are expensive to maintain and may prevent or delay access by policy officials who really need the information. In addition, the proliferation of these programs has reduced their protection value.

The new Order allows agencies to continue such programs -- they are needed in special cases -- but it will reduce their number. Henceforth, these programs may be continued or created only upon a written finding of necessity by an agency head. A "sunset" provision will terminate each program after five years unless a new determination of need is made.
- (13) Agencies are required to impose administrative penalties for unnecessary or excessive classification and for disclosure or compromise of properly classified information. The new Order also creates procedures to assure that violations of law are reported to the Justice Department.
- (14) The new Order tightens administrative restrictions on copying and dissemination of classified documents, including a requirement that records be kept of all copies Top Secret documents and certain others.
- (15) Special treatment is provided for national security information obtained in confidence from foreign governments or international organizations. Such information will be presumed to meet the test for classification and may be classified for up to 30 years instead of 20. All the other requirements of the new Order apply, however. This provision was added because most allied governments are more restrictive than the U.S., and without such special treatment they might stop supplying us with valuable information.
- (16) The use of classification to conceal violations of law is forbidden.
- (17) The new Order says that classification may not be restored to documents once they are officially released to the public.
- (18) The new Order forbids the use of classification to limit dissemination of information that does not merit classification or to prevent or delay the public release of such information.
- (19) Agencies are required to establish classification guides to promote uniformity in classification level and duration.

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